

# Financial Governance of UNHCR Part 1: UNHCR's Changing Environment

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## UNHCRの財政的ガバナンス：第一部 変動するUNHCRの環境

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### 要旨

本論文ではUNHCR（国連難民高等弁務官事務所）を巡る財政的ガバナンスの態様を論じる。そこでは、難民・国内避難民保護という国際公共財供給のための難民レジームの中核であるUNHCRを、「本人」（Principal）である加盟国の「代理人」（Agent）として位置づけ、その関係からUNHCRの財政ガバナンスの態様とその変化を論じる。以下の第一部では、難民・国内避難民の発生状況と加盟国の反応を中心としたUNHCRの外部的環境を論じ、次号の第二部ではそれに対するUNHCRの内部的反応、特にその財政戦略とメカニズムを論ずる。

**キーワード：** 難民レジーム、UNHCR、財政的ガバナンス、本人—代理人モデル、資源依存性

**Keywords：** Refugee Regime, UNHCR, Financial Governance, Principal-Agency Model, Resources Dependency

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## 1. Introduction

Refugees and the issue of their protection existed for centuries. There was an international effort to protect them after World War I. However, it was only after World War II that the international community came to provide protection to them in a full-fledged fashion when the United Nations established the Convention relating to the Status of Refugees in 1951 (below, 1951 Convention) and the United Nations High Commissioner for Refugees (below, UNHCR).

Put simply, refugee problems are the result of changes in international and domestic politics. Much of the large-scale forced displacement throughout the world arises from human rights abuses and armed conflicts. Historically, wars of independence, internal armed conflicts surrounding resources, and struggles for dominance and proxy wars between major nations have produced many refugees. In recent decades there are a growing number of people who cross national borders escaping dire poverty, food shortages and other natural disasters. These are the results of failed national governance. These cases involve politics as well.<sup>1</sup> With the plight of refugees becoming widely known and the further spread of human rights norms, their protection became a priority issue in international society. On the other hand, seeing the influx of many refugees as a threat to national security, states wished to contain their cross-border movement through stronger management of national borders.

Between the trend toward protecting human rights of refugees and the wishes of states to protect sovereignty and national interests, an international Refugee Regime was created, with the UNHCR as its core pillar. UNHCR has continually been at the center of these dynamics, while on the one hand upholding the core

values of international protection of refugees, on the other hand taking into account member states' interests. UNHCR is an "agent" of member states that are its "principals" and that provide UNHCR with the financial resources needed to carry out its mandate. UNHCR is a heavily resource-dependent organization and this is the context within which UNHCR's financial governance is analyzed.

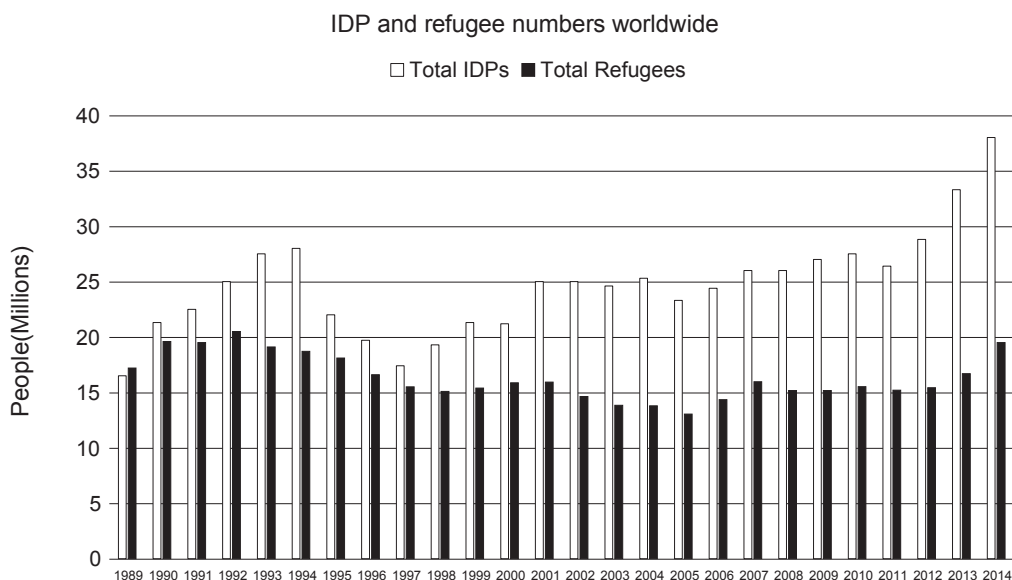
## 2. The Issue

### 2.1 Conflict between politics and human rights

At the basis of forced migration are conflicts between state power and human rights. The Westphalia sovereignty regime established in 1648 created the current form of international society, in which each sovereign state, equipped with the three elements of a territory, a nation, and governing power, rules domestically as the supreme authority, and co-exists with other states observing the principle of non-interference. If these three elements are connect in a consistent manner and are maintained as a "trinity," domestically a country will be stable, and the international community will be as well. However, it is impossible for all sovereign states—which now number almost two hundred—to maintain this ideal form. In fact, the many former colonies in Asia and Africa that became independent states during the 1960s were unable to domestically maintain the "trinity," giving rise to armed conflicts and refugees. After the Cold War, the number of "fragile states" and "failed states" increased. With the number of UN member states having reached 193, the number of countries that have domestic tensions, discord, or conflict and cannot maintain the "trinity" has increased and consequently the number of Internally Displaced Persons, (hereafter IDPs) has increased as well. From 2004 to 2014, the total number of

IDPs, refugees, and asylum seekers increased by fifty percent, from forty to sixty million.<sup>2</sup> The 2014 world population was 7.2 billion peo-

ple,<sup>3</sup> meaning that 1 in 120 people fall into this category.



Emma Haddad sees the fundamental cause of the refugee problem as being the current form of international society that is comprised of nation-states. She argues that refugees arise owing to deviations from the aforementioned ideal relationship between territory, nation, and governing power, stating that refugees are an unintended yet unavoidable consequence of the existing nation-state system. Furthermore, Haddad sees the existence of those who have become outsiders as refugees (them) functioning to strengthen the unity of the nation (insiders/us), and thus actually reinforcing the sovereign nation-state system. In other words, the existence of refugees and the nation-state regime mutually constitute each other.<sup>4</sup>

Many governments, which have the responsibility to protect their citizens, have not met or could not meet this responsibility, and will probably fail to do so in the future as well. From a humanitarian perspective, it is only

natural to want to protect those who are not protected by their government. The protection of the many refugees and IDPs who cannot enjoy human security is a moral imperative for the international community today.

On the other hand, the influx of many refugees can give rise to economic, social and political problems in receiving countries. By the end of 2015, the global refugee reached 20 million for the first time since 1992 and the numbers of IDPs jumped by 2 million to 34 million.<sup>5</sup> Because of the Syrian civil war that began in 2011, by the end of 2015, there were 4.4 million refugees who had escaped to surrounding countries; 2.0 million went to Turkey, and one million flowed into Lebanon, which has a population of 4 million. When such a situation continues for a long time, the security of receiving countries can be threatened and this could cause inter-state strains. Forced migration is not only the result of the behavior of

states but also a cause negatively affecting relations between states. Thus, it is necessary from political, humanitarian, and human rights perspectives to construct an international regime for protecting refugees. The refugee problem cannot be solved by one country alone because the problem transcends national borders: it can be contained and solved only through international cooperation. It is in this context, that the international community created a global refugee regime.

Krasner defines a regime as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area.”<sup>6</sup> A “global refugee regime” can then be defined, adopting the definition of Krasner, as the overall norms, rules, principles, and decision-making procedures that regulate the protection of refugees by states, inter-governmental organizations, and NGOs. The core of the global refugee regime is the 1951 Convention and the UNHCR. Both support a system that aims for the protection of refugees and protection of states interests.

## 2.2 Refugee protection as a global public good

The global refugee regime is also a global public good. A global public good is a good (or service) that has the nature of being non-excludable and non-rivalrous, namely, it can be used by anyone once it is offered, and does not decrease no matter how many people use it.<sup>7</sup> The refugee regime is a global public good because it offers humanitarian as well as political values that can be used by any state/individual once they are offered, and do not decrease no matter how many states/people use them.<sup>8</sup>

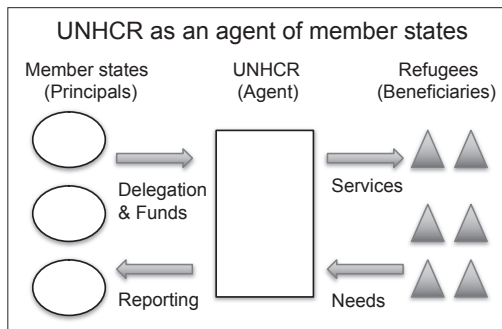
However, inherent in public goods is the issue of “free riders”. If neighboring countries

protect the majority of refugees escaping from conflicts in the Global South, countries in the Global North do not need to accept them. In fact, 86 percent of the refugees that existed at the end of 2014 had been received by developing countries. Lebanon has accepted over one million Syrian refugees, meaning that it hosts 232 refugees for every 1000 members of its population.<sup>9</sup> In other words, many poor countries shoulder heavy economic, societal, and political costs by accommodating refugees, while rich countries are, in effect, free riding on the protection offered by the former. Within countries in the Global North there are also considerable differences in numbers of refugees accepted. Some rich countries are perceived to be free riders.

The challenge for the international community is to create a regime in which responsibilities and burdens (including financial ones) are equitably shared by all countries in a sustainable manner. One of the core tasks of UNHCR is, on behalf of the member states, to oversee the provision of the global public goods and fair sharing of burdens by all member states.

## 2.3 Principal-Agency Model

It is in this context that the role of the UNHCR should be considered. Member States created the UNHCR as their agent with the mandate to provide protection to refugees and find solutions to their problems. The UNHCR is an indispensable element of the global refugee regime. Member States cannot directly protect millions of refugees without the UNHCR and the UNHCR cannot exist without the cooperation and financial supports of the Member States. They are mutually constitutive. The financial governance of the UNHCR should be analyzed in a principal-agent relationship.



The principal-agent model sees states (principals) as creating international organizations (agents) to undertake specific tasks for them. As long as the agents undertake those tasks reasonably well, the principals will leave them alone, because extensive oversight is expensive. But sometimes the interests of principals and agents differ.<sup>10</sup> When the behavior of the agents strays too far from the goals of the principals, the principals must act to rein the agents in.<sup>11</sup>

A key assumption of the Principal-Agent model is that agents would pursue their own interests, subject to constraints imposed on them by their principals. Since the preferences of the principals and agents are not necessarily the same, there is always a possible conflict of interest between the two parties.<sup>12</sup> Furthermore, organizations are dependent on their environment. The need for resources, including financial and physical resources as well as information, obtained from the environment, makes organizations dependent on the external sources of these resources. Such external resource dependency forces organizations to seek opportunities to reduce dependency, such as coopting, to obtain more autonomy or to re-arrange internal dynamics to ensure organizational survival, if not success.<sup>13</sup>

The UNHCR is an agent that is delegated to carry out its protection mandate by the mem-

ber states, which are principals. As it is difficult for member states to handle individually each refugee situation as it arises, they delegate the tasks to the UNHCR. The merit of doing so lies in the UNHCR's expertise, information and analytical capabilities, and efficient and effective use of resources, among others. The UNHCR assesses refugees' needs, develops policy alternative receives directions and funding from member states, carries out the protection work, and discharges its accountability by reporting the results to member states. However, because the UNHCR may act with its own interests as an organizational body, it is not guaranteed that it realizes member states' political intentions. On the other hand, as a resource dependency organization, UNHCR must obey the will of the member states. The UNHCR engages in its activities while being urged by humanitarian considerations and constrained within a political environment that changes daily.

Based on this conceptual framework, we will review the changes in the environment surrounding the UNHCR, bearing in mind the inescapable conflicts between politics and human rights.

### 3. The History of Forced Displacement

#### 3.1 The Cold War Era

The UN Charter explicitly states the importance of international cooperation for solving human rights problems.<sup>14</sup> In order to protect the millions of refugees that appeared in European countries during and after World War II, in 1943 the United Nations Relief and Rehabilitation Administration (UNRRA; ~1947) was created, which passed on these duties in 1951 to the UNHCR.<sup>15</sup> The first global refugee regime was comprised of three pillars: the 1951 Convention,<sup>16</sup> the UNHCR and hundreds of NGOs

that implement assistance projects. The basic elements of the 1951 Convention include the principle of non-refoulement,<sup>17</sup> territorial protection, and the three solutions (repatriation, integration in a receiving country, or resettlement in a third country). Its Preamble states that while each participating country has the responsibility to protect refugees, international solidarity and cooperation are indispensable so that protection of refugees does not force excessive burdens upon some countries.<sup>18</sup> The concepts of national responsibility and international solidarity/burden sharing are the keynote of the global refugee regime.

However, the 1951 Convention only applied to Europe, and also was limited temporally to those who had become refugees due to circumstances before 1951. Furthermore, since it came into existence under the leadership of Western countries at the beginning of the Cold War, the refugee regime had a strong political color to it from the beginning. Western countries welcomed political exiles (refugees) who “voted with their feet” by escaping to them from communism. The Refugee Convention defines a refugee as someone, who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.” This statement had in mind “political” refugees escaping from the communist bloc. The 1951 refugee regime was used to show the superiority of Western countries. This is an example of the political use of a humanitarian

regime. Since Eastern communist countries did not recognize the freedom of their citizens to leave the country, there were few refugees who escaped to the West. The 1951 refugee regime covered a very small number of people. The UNHCR was also a small organization with only several dozen employees. Nonetheless, it did play a political role in the context of the Cold war, if not by intention.

From the 1960s to the 1970s, following the wars of independence, many former colonies gained independence and in the process millions of refugees were produced. Fleeing armed conflicts of those countries, millions of refugees flowed into surrounding countries. Because these surrounding countries were also poor and unstable, refugee problems caused entire regions to destabilize as well.

From the 1970s to the 1980s, in Asia and Central and South America, millions of refugees were produced by disturbances that had a strong East-West “proxy war” side to them. The Vietnam War, which killed 5 million ended in 1975, and over 1.4 million Vietnamese, disliking their country’s socialist transformation, became refugees. Some of them became “boat people”, and their stories of survival and death left an unforgettable memories in the minds of people. The United States, Australia, and other European countries accepted the majority of the refugees. Japan also took in approximately eleven thousand people. The 1951 Convention did not envision a situation in which millions of refugees appeared in countries outside Europe. Arriving from the Global South in the millions, refugees became a large political and human rights issue in European countries.

Furthermore, starting in the 1980s there were an increasing number of economic migrants, who were seeking to escape poverty, sometimes mixing with refugees and often-

times using illegal routes to get to countries in the North. The Northern countries were alarmed at the possibility of a further massive influx of refugees from the Global South, and began to restrict the inflow, leading to a “protection crisis.”<sup>19</sup> So-called “asylum-migration nexus issue” became a difficult problem for the Global North. As persecution/conflict and poverty are wrapped up in each other, it is hard to differentiate between (true) refugees and economic migrants and pick out the former from the “mixed migrants”. Facing the dual risks of expelling refugees as migrants and protecting migrants as refugees, Western countries chose to take the former risk, and gradually became restrictive in their acceptance of refugees. This trend continues to date.

### 3.2 The Post-Cold War Period.

The conclusion of the Cold War in 1989 brought about considerable changes in the causes, consequences, and international responses to the refugee problem. Betraying people's expectations of “peace dividends,” ethnic conflicts broke out in the Balkans, Africa, and the Middle East, in the first half of the 1990s. Fighting methods also changed; ordinary citizens became targets in addition to being combatants. A typical example is found in the dissolution of the former Yugoslavian Republic, during which opposing parties used an “ethnic cleansing” by deliberately attacking civilians to instill fear in them and prompt their mass exodus. Elsewhere, armed conflict continued in Afghanistan (producing six million refugees), in the two Iraq wars in 1991 and 2003, and in the failed state of Somalia, where the government's power no longer extended to the provinces. Forced displacement was not only the result of conflict but also its aim, giving rise to many refugees and IDPs.

### 3.3 Today - The Global Crisis

Following the failure of the “Arab Spring” of 2011, many countries in the Middle East are in turmoil. In particular, the Syrian war has created so far 4.5 million refugees and 8 million IDP out of a population of 22 million. Over a million asylum seekers and economic migrants crossed the Mediterranean sea attempting to reach northern European countries, in particular Germany. In the hazardous journey 4000 people lost their lives. Elsewhere in Africa internal strife continued in South Sudan and Central African Republic. 2015 saw global forced displacement exceeding 60 million for the first time in history. One person in every 122 has been forced to flee their home. An average of 4,600 are forced to flee their countries every day. As more refugees are stuck in exile, pressures on countries hosting them are growing, so are resentment and “politicization” of refugee issues.<sup>20</sup> The international community is facing an unprecedented challenge in balancing the protection of refugees and interest of member states. The UNHCR's ability to coordinate the international efforts to save lives is being seriously tested.

## 4. The Development of the Global Refugee Regime

### 4.1 The Development of Human Rights Norms

After World War II the responses to the refugee issues continued to change. At the basis of this was the international spread of human rights norms. In 1945, out of a deep reflection upon the tragedies of fascism and two world wars, the international community accepted the protection of human rights as a universal value. One of the accomplishments of the UN was the establishment of many human rights treaties, as well as the development of institutions to implement the rules contained there-

in. This began with the 1945 United Nations Charter and the 1948 Universal Declaration of Human Rights (UDHR hereafter). In the former, the principles of the self-determination and of the prohibition of racial, sexual, linguistic, and religious discrimination are important in relation to the protection of refugees and IDPs. At the same time, the UN established the Commission on Human Rights.

The UDHR reflects upon the serious human rights violations (such as the mass murder of Jews) in history, and articulates various norms for the protection of human rights. Article 1 and Article 2 state, “All human beings are born free and equal in dignity and rights,” that human rights are universal, and, “Everyone is entitled to all the rights and freedoms set forth in this Declaration.” This declaration expresses norms for state behavior, and declares that those who have left their countries, refugees, also have the right to receive protection from states or international society. In 1948 the Convention on the Prevention and Punishment of the Crime of Genocide was adopted, followed by the International Convention on the Elimination of All Forms of Racial Discrimination in 1965, and the Convention on the Elimination of All Forms of Discrimination Against Women in 1967. They have continued to offer a moral and legal foundation for the protection of refugees and IDPs.

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which were adopted in 1966 by the UN General Assembly developed the provisions of the UDHR into treaties that have binding force as international law. The former Covenant concerns freedoms, addressing the rights of the individual to freely decide, such as rights regarding one’s own life, the security of one’s

person, the right to income and property, the right to participate in elections, among others. This Covenant shares the value of the 1951 Refugee Convention in that both emphasize the value of “freedom from fear”, which the Western states consider important. The latter Covenant addresses social rights that should be maintained by the state, such as those regarding social security, education, and standard of living, among others. They value “freedom from want” and were supported by communist countries during the General Assembly’s discussions. These two international human rights covenants reflected the Cold War period philosophical, ideological differences. The co-existence of the two Covenants reflects the political rivalries between capitalism and socialism at that time.

The 1993 World Conference on Human Rights in Vienna held amidst ethnic conflicts and ethnic cleansing in the Balkans urged the swift and full elimination of “all forms and manifestations of racism, xenophobia or related intolerance.” The same year the Office of the United Nations High Commissioner for Human Rights was established. In 2005 the UN World Summit held the promotion and protection of human rights to be the most pressing issue for the UN.<sup>21</sup> This was further strengthened in an institutional form, with the Human Rights Committee being elevated to the United Nations Human Rights Council in 2006.

## 4.2 The Development of the Global Refugee Regime

The 1951 Refugee Convention<sup>22</sup> became the hard law for refugee protection and the core of the global refugee regime. The principle of “non-refoulement” found in the Convention is particularly important. It provides that refugees must not be deported or repatriated to



countries in which there is danger to their lives or their freedom is threatened. Article 31 of the Convention that states that refugees who illegally entered or are illegally in the country to which they are applying for protection should not be punished, is also important. However, the definition of refugee in this 1951 Convention is restricted; its protection is temporally and spatially limited to someone who is outside the country of his nationality owing to “events occurring in Europe before 1 January 1951.” The Convention had a clear political motivation of trying to protect the interests of Western countries by taking anti-establishment individuals from communist Eastern countries but excluding refugees from the Global South.<sup>23</sup>

With the 1951 Convention as its nucleus, the refugee regime gradually strengthened. First, the definition of refugee expanded. While the Convention’s criterion for refugee status allows only the “fear of persecution” based on five reasons mentioned above, the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (below, Africa Refugee Convention)<sup>24</sup> expanded the definition of refugee to include those who have left their home countries as the result of armed conflicts (so-called Conflict Refugees). Another characteristic of the OAU Convention is that it does not dictate individual Refugee Status Determination (RSD) process, but allows a group RSD on a *prima facie* basis. This reflects the fact that refugees often escape in large groups (families, people from same villages.) and conducting individual RSD is time consuming and is not practical in mass influx situations.

In Central and South America during the 1970s and 1980s, a large number of refugees appeared amidst political turbulences pre-

vailing at that time. In order to handle this, in 1984 ten Latin American countries adopted the Cartagena Declaration on Refugees (below, Cartagena Declaration),<sup>25</sup> which defines refugee as “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.” This was an epoch-making development that (onsiderabl) expanded the 1951 Convention’s limited definition of refugees.

Second, the refugee regime expanded both temporally and regionally. The 1951 Convention was temporally limited to forced displacement caused by events preceding it, and its geographical applicability was limited to Europe. It did not envision the high numbers of “conflict refugees” arising in Asia and Africa from 1960 onwards. The international community was compelled from both a humanitarian perspective and political perspective to respond and in 1967 the UN adopted a “protocol”<sup>26</sup> for the 1951 Convention that removed the temporal restriction of “before 1 January 1951”. Furthermore, the 1967 Protocol eliminated the reference to Europe expanding the geographical scope of the 1951 Convention to Africa and Asia. The refugee regime was expanded from a Europe-centered regional one into a global one. The Central and South American refugee regime was further developed in 2004 with the adoption of the Mexico Plan of Action supported by 20 countries.<sup>27</sup> The Plan of Action advocated the protection of “urban refugees” that live hidden in urban areas rather than in refugee camps, as well as the expansion of refugee resettlement projects to address their plight.

The European Union was particularly important in the development of the global refugee

regime. In 1999, the EU decided to create a Common European Asylum System (CEAS) and issued four directives by 2005, on (1) temporary protection, (2) the treatment of asylum seekers, (3) substitute protection, and (4) protection standards. Furthermore, Frontex (an abbreviation of the French *frontières extérieures*) was established for the joint management of the national borders of the EU and surrounding countries. Frontex's annual budget is 120 million dollars, and is comprised of some 300 employees. Moreover, in 2010, the European Asylum Support Office (EASO) was established for the policy coordination between EU countries in their execution of the CEAS. While such moves can also be seen as the creation of a "fortress Europe" to guard off influx of migrants and refugees, with 27 member countries (where over half of yearly asylum applications to developed countries are received), the EU's common refugee policy considerably strengthens the global refugee regime.

Today's global refugee regime is built upon the regional refugee regimes in Europe, Africa, and Central and South America. Since many refugees escape to, and are protected by, neighboring countries, a regional approach is logical and pragmatic. Unfortunately, there are no regional refugee treaties or regional refugee regimes for the Arab world and Asia. The weakest parts of the international solidarity chain of refugee protection are in these regions. However, in Arab countries, the issue is somewhat complicated as there is the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) that assists over five million Palestinian refugees in the region.

#### 4.3 Protection of IDPs

A very important development is the emer-

gence of a regime for protecting IDPs. IDPs are those who escape to a safer place within their own country to avoid harms arising from armed conflicts and/or persecution. They do not cross international borders. The international community's interest in this issue heightened after the conclusion of the Cold War. Betraying the hope that a more stable international order would be formed, religious and ethnic conflicts, which had been suppressed by the two superpowers, arose one after another, leading to the creation of millions of IDPs. At the end of 2014 there were 38 million IDPs in 60 countries, an increase of 11 million people from 2013 and the primary cause of this was the civil wars in Syria and Iraq.<sup>28</sup> Eighty percent of IDPs are the vulnerable, such as women and children. IDPs suffer from starvation, illness, substandard dwellings, and the loss of educational opportunities, social discrimination, and so on. The harm they experience sometimes exceeds that of refugees.

During the Cold War era, ostensibly based on a respect for state sovereignty, the issue of IDPs was seen as one of domestic politics, and not as an international problem. Even if there were many IDPs in a country, in the Cold War framework this could not emerge as a "problem". Likewise human rights issues collected scant attention. Following the post-Cold War paradigm shift in international relations and the further spread of human rights norms, the miserable conditions of IDPs became widely known, and the international protection of them emerged as an issue. However, trying to eliminate this gap in protection necessarily involves coming into conflict with the basic principle of state sovereignty. The current nation state system is based upon the principle of non-interference in internal affairs of a state. Insofar as this principle is regarded as para-

mount, there was a limit to the protection of IDPs. As a result, the response of international society and UNHCR had remained *ad hoc* and lacked consistency.

In 1991, the United Nations Security Council, for the first time, allowed the UNHCR, with the protection by military force, to provide humanitarian support to Kurds who had escaped to Iraq's northern mountainous region. However, in 1994 the Security Council reached a deadlock with regard to Rwanda, and amidst its inability to take effective measures, over eight hundred thousand people were massacred. In the case of the 1999 Kosovo conflict, NATO engaged in a large-scale aerial bombing campaign without the Security Council's approval in the name of "humanitarian intervention." There was no consistency in the approach to the protection of IDPs, and UNHCR's response was ad-hoc, too.

In February of 1992 the UN Security Council adopted Resolution 1265 on Protection of Civilians in Armed Conflict<sup>29</sup> that emphasizes the responsibility of states to prevent massacres of ethnic groups, crimes against humanity, and serious infringements of international law. In September 2000, the Canadian government's International Commission on Intervention and State Sovereignty published the well-known "Responsibility to Protect" report on a state's responsibility to protect its own citizens.<sup>30</sup> The report says that the responsibility of a state to protect its people "rests with the state concerned, and that it is only if the state is unable or unwilling to fulfill this responsibility, that it becomes the responsibility of the international community to act in its place." The idea that sovereignty is accompanied by responsibility and has limits is epoch-making and could change the behavior of nation-states in future. The notion of "responsibility to protect" was

again embraced at the 2005 UN summit and in a UN Security Council resolution in the following year.<sup>31</sup> The norm is slowly spreading as a new global norm.

Earlier, in February 1998, Francis M. Deng, who was the United Nations' Special Rapporteur on the Human Rights of IDPs and Roberta Cohen of the Brookings Institution submitted to the United Nations Human Rights Committee "Guiding Principles on Internal Displacement" (below, GPIIP) as basic norms for the protection of IDPs.<sup>32</sup> At the 2005 UN summit, heads of state declared that the GPIIP is "an important international framework for the protection of IDPs." Many countries have accepted the GPIIP as an international norm. For instance, the 2006 Protocol on the Protection and Assistance to IDPs functions as a legal framework for the African Great Lakes region and the region. The 2009 African Union Convention for the Protection and Assistance to IDPs in Africa (Kampala Convention) lays down as a hard law everything from preventing the appearance of IDPs and their protection and assistance to permanent solutions. The Kampala Convention made it clear that states are responsible for the protection of IDPs and provided for African Union's right to intervene in case of non-compliance. As of 2011, 32 countries were signatories. So far twenty countries have established domestic laws and/or strategies regarding IDPs.<sup>33</sup> In this way, in the past 15 years the GPIIP has been internationally accepted, and is in the process of transforming from a "soft law" into a "hard law." While it will probably still take time until the GPIIP reaches the status of hard law, there is no doubt that it has become part of the international community's agenda.

Until the end of the Cold War, the protection of IDPs was unthinkable. The implications

of this becoming a international consensus are far-reaching. There are many countries in the international community with governments that are unable to protect IDPs or with no intention of protecting them in the first place. Millions of IDPs have arisen, and will arise, as the result of armed conflicts, government oppression and persecution of ethnic or religious minorities, and other human rights violations. The international community will be compelled to make hard decisions as to whether to intervene or not, if so, how and when. Such decisions have major strategic, operational and financial implications for UNHCR.

To ensure consistency and coherence of intervention by the international community, the UN's Inter-Agency Standing Committee (IASC) in 2006 introduced a "cluster approach" at the ground level. As opposed to UN organizations engaging in their activities separately, a cluster approach involves deciding the organizations that will be responsible for each of 11 clusters (fields of expertise), and constructing partnerships centered around these organizations with other support organizations. This is to prevent gaps and overlaps in support.<sup>34</sup> UNCHR is responsible for the IDP Protection Sector. For UNHCR, protection of IDPs has become as important as refugee protection. In 2015 the number of IDPs receiving support from UN agencies reached 34 million compared to 5.5 million in 2015. 34 million is more than twice that of refugees in 2015 (15 million).<sup>35</sup>

## **5. The Resistance of States and the Shrinking of Protection Spaces**

### **5.1 Restrictions on the Acceptance of Refugees**

While the international protection regime for refugees and IDPs is advancing, there are growing trends toward protecting the interests

and sovereignty of states and strengthening the control of national borders. The first trend began in the 1980s when European states started putting restrictions on the arrival of refugees. In the 1990s, following the collapse of the Soviet Union and the conflict in the Balkans, many asylum seekers and economic migrants arrived in west European countries, which introduced restrictive measures. Examples include the revision of domestic laws to make it harder to be recognized as a refugee, the bestowal of "temporary protection" instead of the status of "refugee" to those who escaped the Yugoslavian conflict, policies to force airline companies to repatriate those without genuine visas/passports, policies to send back refugee applicants to "safe third countries" that border the European Union, and policies that restrictively interpret the 1951 Convention (for example, excluding persecution by non-state actors). In the background to this was declining domestic political support for helping refugees amidst a discourse that refugees are a threat to national security and deprive nationals of their own resources. During the Cold War refugees that fled from communist countries to Western countries were welcomed, but after the demise of the Cold War, asylum seekers as well as economic migrants are uninvited and unwelcomed guests. The 1951 Convention is now used to exclude refugees, not to protect them.<sup>36</sup>

This is marked today in the countries shouldering the influx of Syrian refugees. The number of refugees and immigrants, who went to Europe via Mediterranean Sea smuggling boats or other illegal routes, exceeded 1.0 million in 2015 alone. In doing so, 4000 people have lost their lives due to the boats sinking. Facing this humanitarian/political crisis, EU countries are being forced to make hard decisions, stuck

between the EU's humanitarian principle and adverse public opinion. UNHCR is also caught in the middle and facing the biggest challenges in its history, including finding requisite financial resources amounting to almost 7 billion US dollars in 2016.

The shrinking of protective spaces can also be seen in countries in the Global South. Since the end of the Cold War, countries surrounding the countries of origin have adopted more restrictive approaches. Neighboring countries are frustrated with economic, social and political costs of protection and the little support they receive from Global North donors, and have taken restrictive measures. A situation has emerged in which countries in the Global North and countries in the Global South push the responsibility to protect refugees onto each other. The Global North, fearing that IDPs will eventually leave their own countries as refugees and arrive, seem to be adopting an "IDPs containment policy" within the countries or region in which they originate. This could lead to a discourse that there is no need for IDPs to seek asylum abroad because they can receive protection within their own countries. If so, the global refugee protection regime will be weakened. For UNHCR this is a dire perspective.

## 5.2 Restrictions on the Acceptance of Migrant Workers

The second trend is restrictions on immigrant workers in European countries. In Europe after World War II, there was a labor shortage that was covered by accepting foreign workers. While it was thought that their stays would be temporary, in reality they settled and the immigrant population rapidly increased, partially owing to families being brought over. From the 1970s to the 1980s, the number of

immigrants and refugees in Europe from African countries increased, and in some countries immigrants exceeded 10 percent of the population. In Germany, UK and France, the issue of their social integration grew serious and these countries have come to restrict the inflow of migrants.

As a result, there is an increased risk that "real" refugees are excluded as economic migrants. It is difficult both subjectively and objectively to differentiate between the refugees and migrants. There are people that actually fulfill the criteria to be refugees yet on the surface appear to be economic immigrants. Today, persecution and conflict (held to be the cause of refugees) and poverty (held to be the cause of migrants) are tangled together and often exist simultaneously. Poverty sometimes leads to conflict between communities, and in such contexts, persecution can occur. On the other hand, prolonged domestic conflict can lead to extreme poverty that creates "survival migrants" who have no other means to survive other than migration.<sup>37</sup> They have the characteristics of both migrants and refugees. As restrictive practices grow, some "real" refugees may give up on applying asylum and chose to live as illegal immigrants. The so-called asylum-migration nexus is presenting UNHCR with another difficult challenge.

## 5.3 The Securitization of Refugee Issues

Since 9/11, a "securitization" trend has appeared, in which migrants and refugee issues are discussed from the perspective of a national (state) security. Governments have come to connect migrants and refugees with international terrorism, and tightened the management of their borders. This discourse has spread at the United Nations as well.<sup>38</sup> While most of the migrants and refugees from

the Global South are escaping from a lack of human security such as dire poverty, violence and human rights violations, their massive influx is perceived by states in the Global North as a threat to “national security”. There are perceptions that refugees and migrants are a threat to national culture; these people are causing burdens on the receiving countries; and these people cause political threat in that they either do not have political loyalty to the receiving country or could become oppositional elements in the national community.<sup>39</sup> This led to the further locking out of migrants and refugees as well as the shrinking of protection spaces, which is another challenge to UNHCR.

#### 5.4 Protracted Refugee Situations

As a result of the shrinking of protection spaces worldwide, the number of refugees who have no choice but to live for long periods of time at refugee camps is increasing. The so-called Protracted Refugee Situations has become an issue from both human rights and political reasons. Many are held at camps in remote areas with their freedom of movement restricted. There is little livelihood and many have been dependent on assistance, developing “dependency syndromes”. They are in effect “warehoused”. In Iran and Pakistan, three million Afghan refugees have lived for over 20 years. Elsewhere, there are over six million refugee who have been refugees for more than five years. Protracted refugee status not only deprives them of “human security,” but also is a considerable economic burden, because over eighty percent of them live in poor developing countries. An influx of refugees could cause conflicts between refugees and local residents over scarce resources such as water and firewood. Armed elements and radical groups may hide in refugee camps, thereby threatening the

national security. Protracted refugee situations are both the results of past conflicts and the causes of new ones.

## 6. Changing Environment and UNHCR’s Response

### 6.1 Conflict between Human Rights and Politics

In the background of the trend toward the protection of refugees and the contradictory trend of the shrinking protection space is the conflict between human rights and national interests. While human rights norms and the global refugee regime have become stronger, a pushback is appearing that seeks to protect national sovereignty, security, and national interests. Refugee problems are essentially political in nature and their protection is inseparable from the dynamics of international politics.

### 6.2 Emergence of a Refugee Regime Complex

There are new developments on refugee protection. The first is the emergence of new regimes that have impacts on the refugee regime. The refugee regime today is linked to the migration regime, the humanitarian/human rights regime, the security regime as well as the development regime. Betts claims that a new “refugee regime complex” is emerging in which the refugee regime and other regimes are wrapped up in each other.<sup>40</sup> While the human rights/humanitarian regimes strengthen the refugee regime, the security and migration regimes may weaken it. Furthermore, given the existence of multiple regimes, it is easy for a state to tend toward “regime shifting,” or pouring its resources into the regime it thinks is the most important. The refugee and IDP regimes tend not to get priorities and it is possible that important decisions regarding

the protection of refugees will be made within other regimes.<sup>41</sup>

### 6.3 North-South Tension and the Agenda for Protection

The second is the intensifying conflicts between the Global South and Global North regarding the sharing of responsibility and costs of refugee protection. For example, at the UNHCR's annual Executive Committee meeting, it has become an established practice for Iran and Pakistan, which have for decades accepted millions of refugees from Afghanistan, to voice their strong frustration that they receive little aid money from developed countries. In order to ease such tension, UNHCR organized a "Global Consultation on International Protection" in 2000, aiming to strengthen the global cooperation on refugee issues. In December 2001 the UNHCR's member states agreed upon the "Agenda for Protection" consisting of the "Declaration of States Parties" and the "Program of Action." The states reconfirmed the relevance of the 1951 Convention and the 1967 Protocol, and pledged to promote (1) strengthening of the implementation of the Convention and its Protocol, (2) effective refugee protection amidst the "mixed migration", (3) a more fair distribution of burdens and responsibilities as well as the strengthening of capacities to receive and protect refugees, (4) effective measures to address security issues, (5) permanent solutions to refugee problems, and (6) responses to the need of refugee women and children. The UNHCR attempted to make the burden sharing between the Global South and the Global North fairer, in particular by introducing a kind of "assessed contribution" system to fix the inherently unstable financial base of the UNHCR. However, the major donor countries turned

down the proposal. On the other hand, based on the realistic judgment that refugee problems in the international community will not disappear, the UNHCR's mandate was made indefinite in 2004 at the UN General Assembly. The recent complex large-scale humanitarian crisis, including that of the Syrian refugees, suggests Haddad's assertion is correct, namely, that refugee problems will continue to arise insofar as the nation-state regime exists.

### 6.4 Response of UNHCR to the new Environment

In response to changes in its environment, the UNHCR has gradually expanded its protection tasks, sometimes upon requests of member countries or the United Nations General Assembly, other times out of its own initiatives. While UNHCR has a pronounced history of defending the lives and rights of the displaced persons, as an agent of the member states that are its principals, it has to comply with the requests of the member states. The UNHCR is also a resource-dependent organization and therefore has to respond to the needs of the major donors such as the US, the European Union and Japan, and must be flexible in its internal management including financial management, to ensure its survival. UNHCR has to act while assessing international political trends and taking into account the interests of member states. With the rise of international NGOs in the "humanitarian business", UNHCR has to respond to the competitive financial environment in designing appropriate strategies. The UNHCR has succeeded when the High Commissioner has promoted humanitarian norms while fully understanding the political interests of member countries, and taken bold action while making judgments about opportunities and threats.



This has been demonstrated during the last decade by the High Commissioner Antonio Guterres who embarked on a series of bold reforms when he took the position in 2005. These can be summarized into three actions (details will be discussed in the Part II of this article). The first is the introduction of a new agenda into UNHCR's programme: the protection of IDPs. For decades the UNHCR had been ambivalent about its involvement in IP operations. Seeing the trend of the then declining number of refugees and increasing number of IDPs, Guterres decided that UNHCR should be fully involved in IDP protection, against the resistance of the Department of International Protection that was concerned that such a course of action could undermine the core refugee mandate of the UNHCR and may reduce financial resources available for refugee protection. The decision was primarily made on a humanitarian considerations to address the plight of million of IDPs, but it was also a matter of the UNHCR's organizational survival. Guterres considered that there would be no future for the UNHCR unless it took leadership in the protection of the increasing IDPs.<sup>42</sup>

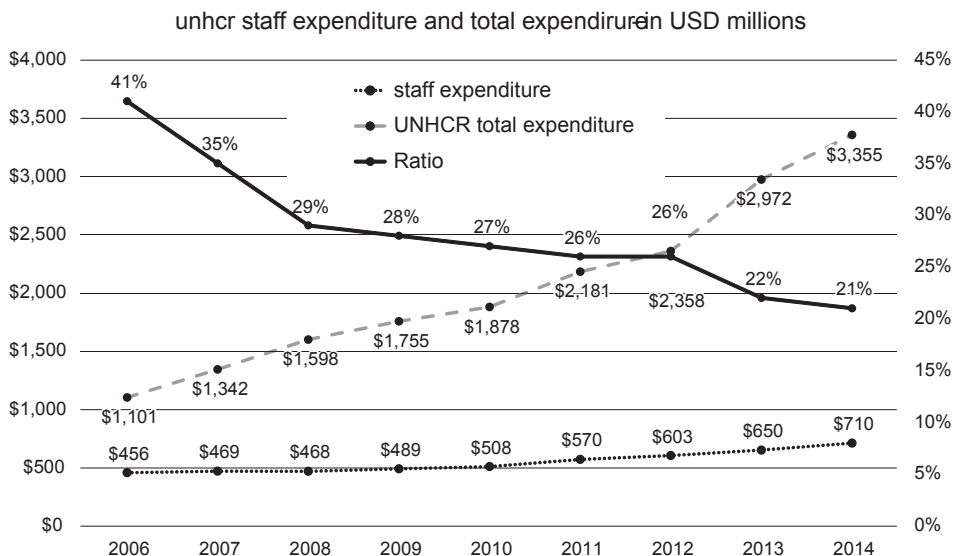
The second is internal management reform; in particular a remarkable reduction in the management and staff costs relative to the protection and assistance costs. In 2006, the share of the management and staff costs was 41% of the total expenditure of 1,557 million US dollars. In 2014 the share was 21% of the total expenditure of 4,063 million US dollars. This means that the "agency cost" of the UNHCR has declined substantially. The member states responded positively to this trend by significantly increasing the financial contributions to the UNHCR. However, this was made possible partly at the expense of its staff members (9,700 of whom 88% are in the field) many of

who serve in remote dangerous field stations.

The third is attempts to reduce dependency on a limited number of donors. The top ten donors contribute 80% of the UNHCR financial needs and this introduces instability and subjects UNHCR to partnership with political pressure from major donors. Also the projected 2016 financial requirements amount to 6.5 billion USD, and it is unrealistic that major donors can respond to such needs. Therefore, in the last decade the UNHCR has been trying to expand its donor base such as private sector and "emerging donors" in the Gulf region. For instance, starting from 20 million in 2006, contributions from the private sector has increased to 200 million in 2014. The UNHCR's target is to increase it to 500 million USD by 2018, an amount unthinkable in 2006.

The issue of how resource dependency has influenced internal policy decision-making at the UNHCR is a theme that will be discussed in the Part II of this article.





## 7. Conclusion

Through these reform measures, the UNHCR has been able to adapt to the dramatic changes in its environment, among others the Syrian crisis. Today the UNHCR is the largest humanitarian organization in the world for the displaced persons. It engages in a wide range of activities from advocacy to support in refugee camps with 9000 thousand employees and a yearly budget of six billion US dollars. The UNHCR seems to have been able to perceive rapid changes in the environment that surrounds it and taken appropriate measures to promote the supply of global public good of refugee/IDP protection. At this time, the UNHCR may be free from a criticism such as it is largely unaccountable for programmes and policies that are insensitive or damaging to the protection and assistance needs of refugees.<sup>43</sup>

According to High Commissioner Guterres, “Our world today is at a crossroads...From a humanitarian perspective, this juncture is defined by two ‘mega-problems’ in an environment of global insecurity: a seemingly uncon-

trollable multiplication of violent conflicts in an environment of global insecurity, and the pervasive and growing effects of natural hazards and climate change that are already shaping our present and will shape our future even more.”<sup>44</sup> The challenge to the UNHCR will only grow in the future, so is the need to study the UNHCR, a pillar of the global refugee regime, in more depth and academic manner. The Part II of this study will focus on the internal financial governance of the UNHCR.

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